

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

AVID LIFE MEDIA, INC., *et al.*,

## Plaintiffs,

vs.

INFOSTREAM GROUP, INC., *et al.*,

Defendant,

## and Related Counterclaims.

Case No. CV12-09201 DDP (AJWx)  
[related to Case No. CV12-09315 DDP  
(AJWx)]

**PROTECTIVE ORDER  
DISCOVERY MATTER**

1           WHEREAS, each of the parties to the above-captioned action, Plaintiffs and  
2 Counter-Defendants Avid Life Media, Inc. (“Avid Life”), Avid Dating Life, Inc. dba  
3 Ashley Madison (“Avid Dating” or “Ashley Madison”), and Established Men, Inc.  
4 (“EMI”) (collectively, “Avid” or “Plaintiffs”), on the one hand, and Defendant and  
5 Counter-Claimant Infostream Group, Inc. (“Infostream”) and Defendant Lead Wey  
6 aka Brandon Wade (“Lead Wey”) (collectively, “Defendants”), on the other hand,  
7 (inclusively, the “Parties”), may produce or seek discovery of documents,  
8 information, or other materials that may contain or relate to personal, confidential,  
9 proprietary, or trade secret information of another party or a third party;

10           IT IS HEREBY ORDERED that the following Protective Order be entered in  
11 this Action:

12           1. **PURPOSES AND LIMITATIONS**

13           Disclosure and discovery activity in this action are likely to involve  
14 production of confidential, proprietary, or private information for which special  
15 protection from public disclosure and from use for any purpose other than  
16 prosecuting this litigation may be warranted. Accordingly, the parties hereby  
17 stipulate to and petition the court to enter the following Stipulated Protective Order.  
18 The parties acknowledge that this Order does not confer blanket protections on all  
19 disclosures or responses to discovery and that the protection it affords from public  
20 disclosure and use extends only to the limited information or items that are entitled  
21 to confidential treatment under the applicable legal principles. The parties further  
22 acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective  
23 Order does not entitle them to file confidential information under seal.

24           2. **DEFINITIONS**

25           2.1    **Challenging Party**: a Party or Non-Party that challenges the designation  
26 of information or items under this Order.

27           2.2    **“CONFIDENTIAL” Information or Items**: information designated as  
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1     “CONFIDENTIAL” (regardless of how it is generated, stored, or maintained) shall  
 2 mean and include any document, thing, deposition testimony, interrogatory answers,  
 3 responses to requests for admissions and requests for production, disclosures  
 4 pursuant to Federal Rule of Civil Procedure 26, or other information provided in  
 5 discovery or settlement communications and negotiations in this Action, which  
 6 contains information that is non-public, confidential, and/or proprietary, whether  
 7 personal, such as information regarding employees’ personal and employment  
 8 information including without limitation social security numbers and personal bank  
 9 account numbers, or business related, such as information that constitutes, reflects, or  
 10 concerns trade secrets, know-how or proprietary data, business, financial, or  
 11 commercial information, the disclosure of which is likely to cause harm to the  
 12 competitive position of the party making the confidentiality designation, including  
 13 for example non-public customer lists, past product development, past  
 14 business/strategic plans, past sales projections, past marketing plans, and non-public  
 15 contracts. Certain limited types of “CONFIDENTIAL” information may be further  
 16 designated, as defined and detailed below, as “Confidential Attorneys’ Eyes Only  
 17 Information”

18       2.3    Counsel: Outside Counsel of Record (as well as their support staff).

19       2.4    Designating Party: a Party or Non-Party that designates information or  
 20 items that it produces in disclosures or in responses to discovery as  
 21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
 22 ONLY”

23       2.5    Disclosure or Discovery Material: all items or information, regardless of  
 24 the medium or manner in which it is generated, stored, or maintained (including,  
 25 among other things, testimony, transcripts, and tangible things), that are produced or  
 26 generated in disclosures or responses to discovery in this matter.

27       2.6    Expert: a person with specialized knowledge or experience in a matter

1 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve  
 2 as an expert witness or as a consultant in this action, (2) is not a past or current  
 3 employee of a Party, (3) is not a current employee of a party's competitor, and (4) at  
 4 the time of retention, is not anticipated to become an employee of a Party.

5       2.7    **“HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”**

6       Information or Items: extremely sensitive “Confidential Information or Items,”  
 7 disclosure of which to another Party or Non-Party would create a substantial risk of  
 8 serious competitive harm that could not be avoided by less restrictive means. This  
 9 type of information and items include, for example, pending patent applications,  
 10 products currently in development and not yet commercially released, current  
 11 business/strategic plans, future sales/financial projections, future marketing plans,  
 12 detailed sales and financial data, or other highly sensitive or proprietary competitive  
 13 or financial information.

14       2.8    Non-Party: any natural person, partnership, corporation, association, or  
 15 other entity not named as a Party to this action.

16       2.9    Outside Counsel of Record: attorneys who are not employees of a party  
 17 to this action but are retained to represent or advise a party to this action and have  
 18 appeared in this action on behalf of that party or are affiliated with a law firm which  
 19 has appeared on behalf of that party.

20       2.10   Party: any party to this action, including all of its officers, directors,  
 21 employees, consultants, and retained experts.

22       2.11   Producing Party: a Party or Non-Party that produces or provides  
 23 Disclosure or Discovery Material in this action.

24       2.12   Professional Vendors: persons or entities that provide litigation support  
 25 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
 26 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
 27 and their employees and subcontractors.

1           2.13 Protected Material: any Disclosure or Discovery Material that is  
2 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –  
3 ATTORNEYS’ EYES ONLY.”

4           2.14 Receiving Party: a Party that receives Disclosure or Discovery Material  
5 from a Producing Party.

6           3. SCOPE

7           The protections conferred by this Stipulation and Order cover not only  
8 Protected Material (as defined above), but also (1) any information copied or  
9 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
10 compilations of Protected Material; and (3) any testimony, conversations, or  
11 presentations by Parties or their Counsel that might reveal Protected Material.  
12 However, the protections conferred by this Stipulation and Order do not cover the  
13 following information: (a) any information that is in the public domain at the time of  
14 disclosure to a Receiving Party or becomes part of the public domain after its  
15 disclosure to a Receiving Party as a result of publication not involving a violation of  
16 this Order, including becoming part of the public record through trial or otherwise;  
17 and (b) any information known to the Receiving Party prior to the disclosure or  
18 obtained by the Receiving Party after the disclosure from a source who obtained the  
19 information lawfully and under no obligation of confidentiality to the Designating  
20 Party. Any use of Protected Material at trial shall be governed by a separate  
21 agreement or order. Notwithstanding the above, by stipulating to the entry of this  
22 Order, Plaintiffs do not waive their right to claim that the September 27, 2011  
23 Settlement Agreement upon which they base some of their claims in this action is  
24 confidential and constitutes “CONFIDENTIAL” information subject to this Order.

25           4. DURATION

26           Even after final disposition of this litigation, the confidentiality obligations  
27 imposed by this Order shall remain in effect until a Designating Party agrees  
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1 otherwise in writing or a court order otherwise directs. Final disposition shall be  
 2 deemed to be the later of (1) dismissal of all claims and defenses in this action, with  
 3 or without prejudice; and (2) final judgment herein after the completion and  
 4 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
 5 including the time limits for filing any motions or applications for extension of time  
 6 pursuant to applicable law.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

9 Each Party or Non-Party that designates information or items for protection  
 10 under this Order must take care to limit any such designation to specific material that  
 11 qualifies under the appropriate standards. To the extent it is practical to do so, the  
 12 Designating Party must designate for protection only those parts of material,  
 13 documents, items, or oral or written communications that qualify – so that other  
 14 portions of the material, documents, items, or communications for which protection  
 15 is not warranted are not swept unjustifiably within the ambit of this Order.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations  
 17 that are shown to be clearly unjustified or that have been made for an improper  
 18 purpose (e.g., to unnecessarily encumber or retard the case development process or  
 19 to impose unnecessary expenses and burdens on other parties) expose the  
 20 Designating Party to sanctions.

21 If it comes to a Designating Party's attention that information or items that it  
 22 designated for protection do not qualify for protection at all or do not qualify for the  
 23 level of protection initially asserted, that Designating Party must promptly notify all  
 24 other parties that it is withdrawing the mistaken designation.

25 **5.2 Manner and Timing of Designations.** Except as otherwise provided in  
 26 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
 27 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
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1 under this Order must be clearly so designated before the material is disclosed or  
2 produced. Designation in conformity with this Order requires:

3 (a) for information in documentary form (e.g., paper or electronic  
4 documents, but excluding transcripts of depositions or other pretrial or trial  
5 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or  
6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that  
7 contains protected material. If only a portion or portions of the material on a page  
8 qualifies for protection, the Producing Party also must clearly identify the protected  
9 portion(s) (e.g., by making appropriate markings in the margins) and must specify,  
10 for each portion, the level of protection being asserted.

11 A Party or Non-Party that makes original documents or materials available for  
12 inspection need not designate them for protection until after the inspecting Party has  
13 indicated which material it would like copied and produced. During the inspection  
14 and before the designation, all of the material made available for inspection shall be  
15 deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the  
16 inspecting Party has identified the documents it wants copied and produced, the  
17 Producing Party must determine which documents, or portions thereof, qualify for  
18 protection under this Order. Then, before producing the specified documents, the  
19 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or  
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that  
21 contains Protected Material. If only a portion or portions of the material on a page  
22 qualifies for protection, the Producing Party also must clearly identify the protected  
23 portion(s) (e.g., by making appropriate markings in the margins) and must specify,  
24 for each portion, the level of protection being asserted.

25 (b) for testimony given in deposition or in other pretrial or trial  
26 proceedings, that the Designating Party identify on the record, before the close of the  
27 deposition, hearing, or other proceeding, all protected testimony and specify the level  
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1 of protection being asserted. When it is impractical to identify separately each  
2 portion of testimony that is entitled to protection or it appears that substantial  
3 portions of the testimony may qualify for protection, the Designating Party may  
4 invoke on the record (before the deposition, hearing, or other proceeding is  
5 concluded) a right to have up to 21 days from the date the deposition transcript is  
6 received by counsel for the Designating Party to identify the specific portions of the  
7 testimony as to which protection is sought and to specify the level of protection  
8 being asserted. Only those portions of the testimony that are appropriately designated  
9 for protection within the 21 days from the date the deposition transcript is received  
10 by counsel for the Designating Party shall be covered by the provisions of this  
11 Stipulated Protective Order. Alternatively, a Designating Party may specify, at the  
12 deposition or up to 21 days from the date the deposition transcript is received by  
13 counsel for the Designating Party if that period is properly invoked, that the entire  
14 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
15 ATTORNEYS’ EYES ONLY.”

16 Parties shall give the other parties notice if they reasonably expect a  
17 deposition, hearing or other proceeding to include Protected Material so that the  
18 other parties can ensure that only authorized individuals who have signed the  
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those  
20 proceedings. The use of a document as an exhibit at a deposition shall not in any way  
21 affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
22 ATTORNEYS’ EYES ONLY.”

23 Transcripts containing Protected Material shall have an obvious legend on the  
24 title page that the transcript contains Protected Material, and the title page shall be  
25 followed by a list of all pages (including line numbers as appropriate) that have been  
26 designated as Protected Material and the level of protection being asserted by the  
27 Designating Party. The Designating Party shall inform the court reporter of these  
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1 requirements. Any transcript that is prepared before the expiration of a 21-day period  
 2 for designation shall be treated during that period as if it had been designated  
 3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless  
 4 otherwise agreed. After the expiration of that period, the transcript shall be treated  
 5 only as actually designated.

6 (c) for information produced in some form other than documentary and  
 7 for any other tangible items, that the Producing Party affix in a prominent place on  
 8 the exterior of the container or containers in which the information or item is stored  
 9 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
 10 EYES ONLY”. If only a portion or portions of the information or item warrant  
 11 protection, the Producing Party, to the extent practicable, shall identify the protected  
 12 portion(s) and specify the level of protection being asserted.

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
 14 failure to designate qualified information or items does not, standing alone, waive  
 15 the Designating Party’s right to secure protection under this Order for such material.  
 16 Upon timely correction of a designation, the Receiving Party must make reasonable  
 17 efforts to assure that the material is treated in accordance with the provisions of this  
 18 Order.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
 21 designation of confidentiality at any time. Unless a prompt challenge to a  
 22 Designating Party’s confidentiality designation is necessary to avoid foreseeable,  
 23 substantial unfairness, unnecessary economic burdens, or a significant disruption or  
 24 delay of the litigation, a Party does not waive its right to challenge a confidentiality  
 25 designation by electing not to mount a challenge promptly after the original  
 26 designation is disclosed.

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
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1 resolution process by providing written notice of each designation it is challenging  
2 and describing the basis for each challenge. To avoid ambiguity as to whether a  
3 challenge has been made, the written notice must recite that the challenge to  
4 confidentiality is being made in accordance with this specific paragraph of the  
5 Protective Order. The parties shall attempt to resolve each challenge in good faith  
6 and must begin the process by conferring directly (in voice to voice dialogue; other  
7 forms of communication are not sufficient) within 14 days of the date of service of  
8 notice. In conferring, the Challenging Party must explain the basis for its belief that  
9 the confidentiality designation was not proper and must give the Designating Party  
10 an opportunity to review the designated material, to reconsider the circumstances,  
11 and, if no change in designation is offered, to explain the basis for the chosen  
12 designation. A Challenging Party may proceed to the next stage of the challenge  
13 process only if it has engaged in this meet and confer process first or establishes that  
14 the Designating Party is unwilling to participate in the meet and confer process in a  
15 timely manner. Nothing in this Order shall be construed as releasing a Party from its  
16 obligation to resolve discovery disputes, including a dispute over a confidentiality  
17 designation, pursuant to Central District of California Local Rule 37-1 and 37-2.

18       6.3 Judicial Intervention. If the Parties cannot resolve a challenge without  
19 court intervention, the Designating Party shall file and serve a motion to retain  
20 confidentiality within 30 days of the initial notice of challenge or within 14 days of  
21 the parties agreeing that the meet and confer process will not resolve their dispute,  
22 whichever is later. Each such motion must be accompanied by a competent  
23 declaration affirming that the movant has complied with the meet and confer  
24 requirements imposed in the preceding paragraph. Failure by the Designating Party  
25 to make such a motion including the required declaration within 30 days (or 14 days,  
26 if applicable) shall automatically waive the confidentiality designation for each  
27 challenged designation. In addition, the Challenging Party may file a motion  
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1 challenging a confidentiality designation at any time if there is good cause for doing  
2 so, including a challenge to the designation of a deposition transcript or any portions  
3 thereof. Any motion brought pursuant to this provision must be accompanied by a  
4 competent declaration affirming that the movant has complied with the meet and  
5 confer requirements imposed by the preceding paragraph.

6 The burden of persuasion in any such challenge proceeding shall be on the  
7 Designating Party. Frivolous challenges and those made for an improper purpose  
8 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
9 expose the Challenging Party to sanctions. If the Challenging Party supports its  
10 challenge of the Producing Party's designation of documents with an argument that  
11 would apply equally to the manner in which the Challenging Party designated its  
12 own documents, such challenge shall be presumptively frivolous. Unless the  
13 Designating Party has waived the confidentiality designation by failing to file a  
14 motion to retain confidentiality as described above, all parties shall continue to  
15 afford the material in question the level of protection to which it is entitled under the  
16 Producing Party's designation until the court rules on the challenge.

17 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
19 disclosed or produced by another Party or by a Non-Party in connection with this  
20 case only for prosecuting, defending, or attempting to settle this litigation. Such  
21 Protected Material may be disclosed only to the categories of persons and under the  
22 conditions described in this Order. When the litigation has been terminated, a  
23 Receiving Party must comply with the provisions of section 13 below (FINAL  
24 DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a  
26 location and in a secure manner that ensures that access is limited to the persons  
27 authorized under this Order.

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1           7.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless  
2 otherwise ordered by the court or permitted in writing by the Designating Party, a  
3 Receiving Party may disclose any information or item designated  
4 “CONFIDENTIAL” only to:

5                   (a) the Receiving Party’s Outside Counsel of Record in this action, as  
6 well as employees of said Outside Counsel of Record;

7                   (b) the officers, directors, and employees of the Receiving Party to  
8 whom disclosure is reasonably necessary for this litigation and who have signed the  
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10                  (c) Experts (as defined in this Order) of the Receiving Party to whom  
11 disclosure is reasonably necessary for this litigation and who have signed the  
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13                  (d) the court and its personnel;

14                  (e) court reporters and their staff, professional jury or trial consultants,  
15 and Professional Vendors to whom disclosure is reasonably necessary for this  
16 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
17 (Exhibit A);

18                  (f) during their depositions, witnesses in the action to whom disclosure  
19 is reasonably necessary and who have signed the “Acknowledgment and Agreement  
20 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or  
21 ordered by the court. Pages of transcribed deposition testimony or exhibits to  
22 depositions that reveal Protected Material must be separately bound by the court  
23 reporter and may not be disclosed to anyone except as permitted under this  
24 Stipulated Protective Order.

25                  (g) the author or recipient of a document containing the information or a  
26 custodian or other person who otherwise possessed or knew the information,  
27 including if such author or recipient is a deponent, even if such deponent does not

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1 sign Exhibit A.

2       7.3    Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
3   ONLY” Information or Items. Unless otherwise ordered by the court or permitted in  
4 writing by the Designating Party, a Receiving Party may disclose any information or  
5 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only  
6 to:

7           (a) the Receiving Party’s Outside Counsel of Record in this action, as  
8 well as employees of said Outside Counsel of Record to whom it is reasonably  
9 necessary to disclose the information for this litigation and who have signed the  
10 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
11 A;

12           (b) Experts (as defined by this Order) of the Receiving Party to whom  
13 disclosure is reasonably necessary for this litigation and who have signed the  
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15           (c) the court and its personnel;

16           (d) court reporters and their staff, professional jury or trial consultants,  
17 and Professional Vendors to whom disclosure is reasonably necessary for this  
18 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
19 (Exhibit A); and

20           (e) the author or recipient of a document containing the information or a  
21 custodian or other person who otherwise possessed or knew the information,  
22 including if such author or recipient is a deponent, even if such deponent does not  
23 sign Exhibit A.

24       8.    PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
25   OTHER LITIGATION

26       If a Party is served with a subpoena or a court order issued in other litigation  
27 that compels disclosure of any information or items designated in this action as  
28 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

ONLY” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful subpoena or directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is

1 subject to an agreement with the Non-Party not to produce the Non-Party's  
2 confidential information, then the Party shall:

- 3                   1. promptly notify in writing the Requesting Party and the Non-  
4 Party that some or all of the information requested is subject to a confidentiality  
5 agreement with a Non-Party;
- 6                   2. promptly provide the Non-Party with a copy of the Stipulated  
7 Protective Order in this litigation, the relevant discovery request(s), and a reasonably  
8 specific description of the information requested; and
- 9                   3. make the information requested available for inspection by the  
10 Non-Party.

11                   (c) Subject to applicable contractual provisions, if the Non-Party fails  
12 to object or seek a protective order from this court within 14 days of receiving the  
13 notice and accompanying information, the Receiving Party may produce the Non-  
14 Party's confidential information responsive to the discovery request. If the Non-Party  
15 timely seeks a protective order, the Receiving Party shall not produce any  
16 information in its possession or control that is subject to the confidentiality  
17 agreement with the Non-Party before a determination by the court. Absent a court  
18 order to the contrary, the Non-Party shall bear the burden and expense of seeking  
19 protection in this court of its Protected Material. Nothing in this provision shall  
20 prohibit a party from seeking a court order to enable it to produce a Non-Party's  
21 confidential information in order to confirm it is not breaching a contract.

22           10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

23           If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
24 Protected Material to any person or in any circumstance not authorized under this  
25 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
26 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
27 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
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1 persons to whom unauthorized disclosures were made of all the terms of this Order,  
2 and (d) request such person or persons to execute the "Acknowledgment and  
3 Agreement to Be Bound" that is attached hereto as Exhibit A.

4 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
5 **PROTECTED MATERIAL**

6 When a Producing Party gives notice to Receiving Parties that certain  
7 inadvertently produced material is subject to a claim of privilege or other protection,  
8 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
9 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
10 may be established in an e-discovery order that provides for production without prior  
11 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
12 parties reach an agreement on the effect of disclosure of a communication or  
13 information covered by the attorney-client privilege or work product protection, the  
14 parties may incorporate their agreement in the stipulated protective order submitted  
15 to the court.

16 **12. MISCELLANEOUS**

17 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of any  
18 person to seek its modification by the court in the future.

19 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this  
20 Protective Order no Party waives any right it otherwise would have to object to  
21 disclosing or producing any information or item on any ground not addressed in this  
22 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
23 ground to use in evidence of any of the material covered by this Protective Order.

24 **12.3 Filing Protected Material.** Without written permission from the  
25 Designating Party or a court order secured after appropriate notice to all interested  
26 persons, a Party may not file in the public record in this action any Protected  
27 Material. A Party that seeks to file under seal any Protected Material must comply  
28 with all applicable Local Rules for the Central District of California. Protected

1 Material may only be filed under seal pursuant to a court order authorizing the  
2 sealing of the specific Protected Material at issue.

3       12.4 Court and Court Personnel. The Court and its personnel are not subject  
4 to this Order and are not required to sign Exhibit A.

5       12.5 Disclosure Prior to Entry of this Order. Pursuant to the Parties'  
6 agreement set forth in their Joint Rule 26(f) Report (Docket Entry 21), if a Party  
7 decides to produce information or documents subject to this Order before the Court  
8 has signed this Order, the Party may nonetheless designate such information or  
9 documents pursuant to this Order as if it had already been entered and, once the  
10 Order is executed, it will be deemed retroactive to the date of the Party's production  
11 of such information or documents.

12       13. FINAL DISPOSITION

13       Within 60 days after the final disposition of this action, as defined in  
14 paragraph 4, each Receiving Party must return all Protected Material to the  
15 Producing Party or destroy such material. As used in this subdivision, "all Protected  
16 Material" includes all copies, abstracts, compilations, summaries, and any other  
17 format reproducing or capturing any of the Protected Material. Whether the  
18 Protected Material is returned or destroyed, the Receiving Party must submit a  
19 written certification to the Producing Party (and, if not the same person or entity, to  
20 the Designating Party) by the 60-day deadline that (1) identifies (by category, where  
21 appropriate) all the Protected Material that was returned or destroyed and (2) affirms  
22 that the Receiving Party has not retained any copies, abstracts, compilations,  
23 summaries or any other format reproducing or capturing any of the Protected  
24 Material. Notwithstanding this provision, Counsel are entitled to retain an archival  
25 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
26 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
27 work product, and consultant and expert work product, even if such materials contain  
28

1 Protected Material. Any such archival copies that contain or constitute Protected  
2 Material remain subject to this Protective Order as set forth in Paragraph 4. The  
3 Parties acknowledge that electronic discovery makes it difficult to keep track of all  
4 discovery and therefore agree to use their best efforts to ensure compliance with the  
5 letter and spirit of this provision.

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7 IT IS SO ORDERED

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9 /s/ Andrew J. Wistrich

10 DATED: 4/22/13

11 Hon. Andrew J. Wistrich

12 United States Magistrate Judge

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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
5 that I have read in its entirety and understand the Stipulated Protective Order that  
6 was issued by the United States District Court for the Central District of California  
7 on \_\_\_\_\_ in the case of \_\_\_\_\_ **[insert formal name of the case and  
8 the number and initials assigned to it by the court]**. I agree to comply with and to  
9 be bound by all the terms of this Stipulated Protective Order and I understand and  
10 acknowledge that failure to so comply could expose me to sanctions and punishment  
11 in the nature of contempt. I solemnly promise that I will not disclose in any manner  
12 any information or item that is subject to this Stipulated Protective Order to any  
13 person or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court  
15 for the Central District of California for the purpose of enforcing the terms of this  
16 Stipulated Protective Order, even if such enforcement proceedings occur after  
17 termination of this action.

18 I hereby appoint \_\_\_\_\_ [print or type full name] of  
19 \_\_\_\_\_ [print or type full address and telephone  
20 number] as my California agent for service of process in connection with this action  
21 or any proceedings related to enforcement of this Stipulated Protective Order.

22 Date: \_\_\_\_\_

23 City and State where sworn and signed: \_\_\_\_\_

24 Printed name: \_\_\_\_\_  
25 [printed name]

26 Signature: \_\_\_\_\_  
27 [signature]